No. 12511

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, *et al.*,

Appellants,

vs.

PAUL MALLONEE, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

Appellees.

BRIEF FOR APPELLEE, ROBERT H. WALLIS.

RAYMOND TREMAINE,
1007 Van Nuys Building, Los Angeles 14,
Attorney for Appellee Robert H. Wallis.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

TABLE OF AUTHORITIES CITED

STATUTES

TEXTBOOKS

No. 12511

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HOME LOAN BANK BOARD, *et al.*,

Appellants,

vs.

PAUL MALLONEE, *et al.*,

Appellees.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO, *et al.*,

Appellants,

vs.

FEDERAL HOME LOAN BANK OF LOS ANGELES, *et al.*,

Appellees.

BRIEF FOR APPELLEE, ROBERT H. WALLIS.

PRELIMINARY STATEMENT.

In view of the consent of the Court that the six appellees who applied for permission may consolidate sections of their briefs and thus eliminate much repetition in the printed pages thereof, and as the briefs of the appellees Mallonee, *et al.*, plaintiffs below, and the Long Beach Federal Savings & Loan Association are comprehensive in scope and as other appellee briefs are concerned with interpleader jurisdiction, this appellee joins in and by this reference incorporates the briefs of said other appel-

lees. This brief will be restricted to matters of principal concern to the appellee, Robert H. Wallis. For purpose of brevity, the various individual parties will be referred to by the surnames, the Home Loan Bank Board will be referred to as the "Board," the Long Beach Federal Savings & Loan Association will be referred to as the "Association," the Federal Home Loan Bank of San Francisco, the Federal Home Loan Bank of Portland, and the Federal Home Loan Bank of Los Angeles, will be referred to respectively as the San Francisco Bank, the Portland Bank, and the Los Angeles Bank.

STATEMENT OF THE CASE.

The Board of Directors of the Long Beach Association were familiar with the unwarranted and unexcusable oppressive action of the appellants Fahey and Ammann in seizing the Los Angeles Bank which had assets of some $46,000,000.00 which was solvent, prosperous and growing. They knew that without investigation, charges or hearing, the appellant Fahey had seized the bank without any warning whatever and transferred its assets to the infinitely smaller Portland Bank, having assets of only some $9,000,000.00 and the transfer of the combined banks to San Francisco under the new name [R. 11].

All of these changes had taken place on one day, March 29, 1946 [R. 11]. The Association was a member of the Los Angeles Bank and its president, Mr. T. A. Gregory was a member of the Board of Directors of the Los Angeles Bank [R. 14]. The Association was a member of the Los Angeles Bank and had invested the sum of $360,000.00 in the stock of the Los Angeles Bank [R. 14]. The Directors of the Association were aware

that this seizure had been caused by reason of the failure of the directors of the bank to submit to the dictation of the appellant Fahey in the election of a successor to its recently deceased president [R. 15-16].

These directors knew that the participation of their president in the request that the Congress of the United States investigate the overbearing demands of appellant Fahey might well bring retaliation upon their Association, which Association as is pointed out in other briefs was in an exceptionally healthy position and which except for the anticipated retaliation of Mr. Fahey for questioning his omnipotent authority had no occasion to fear any action on the part of the Government. Because of their fear, which later developments showed to be more than warranted, they adopted the resolution appropriating the sum of $100,000.00 for attorneys' fees which was immediately seized upon by Mr. Fahey and his under underlings as a justification in itself for the seizure of the Association and the appointment of a conservator.

This resolution of the Board of Directors is self-explanatory and is as follows [R. 194]:

> "Whereas, there have been indications that retaliation against this Association by those purporting to be representing the Federal supervising authorities, because the representative of this Association duly elected as director of the Federal Home Loan Bank of Los Angeles did not disregard the legal rights and best interests of said bank and submit to the dictation of the Federal Home Loan Bank Commissioner, and,
>
> "Whereas, such retaliations are unwarranted and violate the principles of our democratic government

and are detrimental to the best interests of this Association,

"Now, therefore, be it resolved, that the officers of this Association be and they are hereby authorized to employ legal counsel to conduct appropriate legal proceedings to restrain the said Federal Home Loan Bank Commissioner or his deputies from interferring with the normal and proper conduct of this Asociation's affairs,

"The sum of One Hundred Thousand and no/100 ($100,000.00) Dollars is hereby appropriated and authorized to be expended for that purpose."

It was only some fifty-two (52) days after the seizure and confiscation of the Federal Home Loan Bank of Los Angeles that the deluge descended on the Association. On May 20, 1946, without warning of any type or nature, the appellant Ammann appeared at the office of the Association and summarily confiscated the Association with the publicly announced intention of starting a "run" on the Association and thereby tearing it down [R. 117-118 and 478].

Pursuant to the above mentioned resolution, there was given to this appellee as general counsel for the Association, a check in the sum of Fifty Thousand and no/100 ($50,000.00) Dollars, to be used by this appellee as such general counsel in resisting the appellants' anticipated unlawful actions. The balance of the One Hundred Thousand and no/100 ($100,000.00) Dollars appropriated was never drawn and the Fifty Thousand and no/100 ($50,000.00) Dollar check was the only payment made under the authority of the resolution. The check was not

cashed, but following the service of the complaint on the appellee as a defendant therein, the check was deposited in court on June 12, 1946, concurrently with the filing of this appellee's answer and cross-claim in the nature of interpleader [R. 96].

The appellants Fahey and Ammann being unable to find any other excuse for the seizure of the Association, seized upon this defensive measure as their principal excuse for the seizure of the assets of the Association.

Mr. Harold Lee, appellant Fahey's deputy, was questioned and testified before the Congressional Investigating Committee as follows:

> "Mr. Lee: I am willing to concede that I appointed a conservator upon the attempt to withdraw $100,000, as I stated.
>
> The Chairman: As I understand you, Mr. Lee, is this $100,000 an incident upon which you base your action?
>
> Mr. Lee: Yes." [R. 206.]

In this connection, it is to be noted that the original order for seizure, No. 5254, dated May 20, 1946 [R. 2975-2976], contained no factual reason whatever for the seizure of the Association. It merely recited that some unknown persons had arrived at some conclusions of law, which in the minds of those unknown persons had led to the further conclusion that a conservator should be appointed. The Association asked for a more definite statement of cause for the appointment of a conservator

[R. 345] which was only slightly more definite [R. 134]. The appellants Fahey and Ammann were desperate for an excuse for the seizure. The solvency of the Association has never been denied. It had grown under the same management in twelve (12) years from assets of approximately seventy-five hundred dollars to assets in excess of twenty-six million dollars [R. 2970], and this same management had built up profits, undivided surplus and reserves in excess of one million three hundred thousand dollars [R. 2969] while continually paying dividends of 2½% to 4% per anum [R. 2970].

All of the assets of this Association were physically located in Southern California [R. 2963], a fact which necessarily made the action of the plaintiffs for the restoration of the property, an action *in rem,* and strictly local in character. The fifty thousand dollar check above described was at all times located in the Southern District of California [R. 88].

The above described attempt on the part of the directors to defend their Association, its capital, surplus, profits and reserves, apparently offered the only available excuse, feeble as it was, for the unwarranted seizure [R. 206]. Mr. Harold Lee, Deputy Home Loan Bank Commissioner, and as such, appellant Fahey's spokesman, in testifying before the Congressional Committee investigating the Federal Home Loan Bank administration, stated that his office recognized that there was nothing improper in the Board of Directors authorizing action to

be taken to restrain Fahey and his deputies from interferring with the normal and proper conduct of the Association's affairs [R. 195]. Mr. Lee explained to the Congressional Committee that his objection to the appropriation was its size rather than its purpose. He testified as follows [R. 207]:

> "Now I do want to make clear that we never have questioned and never would question the withdrawal of a fair and reasonable amount, to challenge the authority of the Federal Home Loan Bank administration. It has been done time and again and can always be done, but to spend hundreds of thousands out of these mutual institutions out there in this thing, we thought, is going too far."

The hundreds of thousands of dollars spent and occasioned to be spent by the actions of the appellants herein dwarfed the size of the $50,000.00 appropriation so bitterly complained of. The cost to the taxpayers for the pay and maintenance of appellants and their attorneys, if it could be accurately added, would be shown to constitute a staggering raid on the Federal Treasury and upon the assets of the so-called San Francisco Bank. In addition to this, the appellants, by virtue of their protracted dilatory tactics in opposing all constructive steps to keep the Association going and to give good title to borrowers, have taken a tremendous amount of time of the courts and court attaches. The special master in chancery appointed by the Court has alone received $60,000.00 in fees of which only the last $15,000.00 allowed has been

appealed from by these appellants. The total allowed by the Court to counsel for the various appellees, with the consent of the appellants, exceeds the sum of $213,000.00. There has in addition been allowed on account of fees to the attorneys for the Los Angeles Bank and its members the sum of $75,000.00 beside some $50,000.00 in costs. The obvious determination of these appellants to prevent a trial on the merits, as must be evident from only a cursory scanning of the transcript of record in this case on this appeal, has caused such a tremendous expenditure of time, money and effort, that the $50,000.00 appropriated compares with other attorneys' fees and costs as a mere pittance. In fact, it is probably a safe assumption to state that the appellants had caused to be spent more money complaining about this $50,000.00 appropriation than is represented by the appropriation itself. The appellants obviously do not want the appellees to have the wherewithal to resist them. The appellants have endeavored in every way to wear down the appellees, and Mr. Fahey and his subordinates apparently believed that by frightening the directors of the Association into returning the $50,000.00 check he would deprive them of the means with which to combat Fahey's own fraudulent and oppressive designs. We submit that the approval of the counsel fees in amounts many times the size of the original $50,000.00 appropriation with the consent [R. 2473] or acquiescence of the appellants or their predecessors in itself constitutes a complete refutation to Mr. Lee's objection to the size of the above described

appropriation and destroys the principal ground claimed by the appellants as the reason for the otherwise unjustified seizure of the Association.

The appellants Fahey and Ammann were named cross-defendants in this appellee's cross-claim in the nature of interpleader [R. 86]. Summons was issued June 24, 1946 [R. 440-444], service was made, both by mail and by personal service in the District of Columbia by the Deputy United States Marshal [R. 440-447] on the cross-defendants Fahey and Ammann [R. 440-446]. By motion dated and filed July 5, 1946, the defendant Ammann moved to dismiss the answer and cross-complaint of this appellee [R. 390]. This motion was heard before a three-judge statutory court on the 15th day of July, 1946 [R. 743-745]. This Court found [R. 750] that the defendant Fahey had been duly and regularly served with process, both individually and in his representative capacity as Federal Home Loan Bank Commissioner. The Court concluded [R. 750] that the motion of Ammann to dismiss this appellee's cross-claim in interpleader should be denied and concluded [R. 751] that this Court had acquired jurisdiction over appellant Fahey and ordered [R. 752] that the motion of Ammann, both individually and as conservator for the Association to dismiss the answer and cross-claim in interpleader of this appellee be denied. The appellant Fahey moved to dismiss this appellee's cross-claim in the nature of interpleader by motion dated October 17, 1946, filed on October 21, 1946 [R. 810-812].

Ammann filed another motion to dismiss on September 8, 1947, which was denied November 10, 1947 [R. 2793]. Ammann filed his answer to the cross-claim in interpleader of this appellee on the 21st day of October, 1946 [R. 813-818]. In his answer, he charged [R. 816] that the $50,000.00 check was unlawfully drawn and delivered to appellee; that the Association was the owner of and entitled to the check and that he [R. 814] was the conservator and in the lawful control of the operations of the Association from which it would follow that he claimed he was entitled to the check or its proceeds. Fahey filed his answer to appellee's cross-claim in interpleader on July 30, 1948, following the denial of his motion to dismiss. In his answer [R. 5056-5058], he incorporated and accepted as his own, all defenses and statements contained in the separate answer of the defendant A. V. Ammann.

It is also noted that Paragraph IX of the cross-claim in the nature of interpleader of this appellee [R. 94] the allegation appears that Fahey and Ammann claimed that they were entitled to and were the owners of the check and fund it represented. This allegation is not directly denied in either the answer of Fahey and Ammann [R. 5056 and 813]. The Plaintiffs Shareholder Committee and the Association answered the cross-claim in interpleader of this appellee [R. 302]. Both of these last named cross-defendants supported the position of this cross-claimant in his right to take and/or use the $50,000.00 appropriated.

ARGUMENT.

I.

Jurisdiction.

(a) Cross and Consolidated Actions Intertwined.

The jurisdictional statement of appellants (App. Br. pp. 1-3) ignores the jurisdiction of the District Court conferred by the many cross-claims and interventions of parties to the consolidated actions other than those of the Association and of the Mallonee plaintiffs. Among these is the cross-claim in the nature of interpleader of Wallis. These various consolidated proceedings are so interrelated and involved one with the others it is impossible to conceive of a decision as to a portion not affecting the issues of others.

The holding of administrative hearings by appellants of the charges against themselves could not encompass all of the issues involved in this litigation so in any event many of the issues would have to be determined by the courts and there might well be a conflict of findings, conclusions and decisions resulting from the separate determinations of various elements involved.

If appellants are successful in this appeal the severing of some issues will entail a multiplicity of actions and the appellants will have partially succeeded in wearing down appellees by the need for more money, time and more harrassment while appellants merrily fritter away more of the taxpayers' money.

(b) The Mallonee Plaintiffs' Original Complaint Conferred Jurisdiction.

This point is elsewhere argued at length and in the interest of brevity will not be argued at length here.

In passing, however, attention is called to the fact that appellants have assumed the jurisdiction was claimed only under 28 U. S. C. 112 (now 28 U. S. C. 1331-2) and have ignored the jurisdiction conferred by 28 U. S. C. 118 (now 28 U. S. C. 1655) as appears in Appellant's Brief, page 2. Old Section 112 expressly made an exception to actions brought under certain sections of the Code, including Section 118 as it then stood.

One of the first cases in which the Supreme Court recognized the modern trend that corporations are amenable to suit wherever they do business was: *Eastman Kodak v. Southern Photo,* 273 U. S. 359, 71 L. Ed. 684 (1927).

In our present appeals, all appellants are "doing business" or "transacting business" within the territory of the district of the Court below and within the State of California. Of necessity, such business is local. It consists of the financing of homes, by mortgages, trust deeds, and other encumbrances upon real property.

Causes of action arising from such business, involving the title to such deeds of trust and real property, must be enforcible in the district where the real property is physically situated, or they cannot be enforced anywhere. A judgment of a Washington, D. C., Court, which might bind appellant Board, would be worthless against appellants Ammann, San Francisco Bank, Los Angeles Bank and other claimants.

Only a Court having *in rem* jurisdiction over the real property involved, can adjudicate in one action, as between

all the parties. Jurisdiction is either in the Court below in California, or for all practical purposes, there is no jurisdiction in any court.

The Court also has general equity jurisdiction in interpleader.

(c) The Cross-Claims in Interpleader (Including That of Wallis) Conferred Jurisdiction Over the Entire Litigation.

The jurisdiction of the District Court over the interpleader features of the litigation (except for the cross-claim of the Association, App. Br. p. 104) is not questioned by appellants in their brief unless the bare unsupported statement in the conclusion (App. Br. pp. 112-113) that all proceedings should be dismissed is to be considered an argument. We submit it follows that the jurisdiction of the Court over all interpleader claims except that of the Association is admitted by failure of challenge and that the jurisdiction so obtained is extant.

The appellants Fahey and Ammann, having been duly served in the Wallis interpleader pursuant to former 28 U. S. C. 41(26), now 28 U. S. C. 1335, 1397, 2361 and having answered, are now before the Court for all purposes.

The leading case covering federal jurisdiction in proceedings in interpleader, and the one most nearly in point in the instant case is that of:

> *Railway Express Agency, Inc. v. Jones, et al.,* 106 F. 2d 341 (C. C. A. 7).

The facts in that case are analogous to those in the case at bar in that a class suit was originally instituted by one

Jones, who, with many others of diverse citizenship had been victims of a nationwide fraud, to wit: the infamous Sir Francis Drake Estate solicitation. The proceeds of the fraud, in money, had been shipped by express and were actually in the hands of the appellant express company when the fraud was discovered and the action filed. Jones, on his own behalf, and for the other victims, all of whose individual losses had been less than $500.00, but which aggregated in excess of $24,000.00, commenced an action against the perpetrators of the fraud and the express company. The appellant express company filed an affirmative defense by a bill in the nature of interpleader admitting the possession of the funds, admitting no interest therein, but alleging the adverse interests of the plaintiff and other members of the class represented by him on the one hand, and the claim of the Collector of Internal Revenue who had appeared in the action and asserted a claim and lien on the funds by reason of non-payment of income tax by the principal perpetrator of the fraud, on the other hand, the unpaid tax being far in excess of the money held. The motion of the express company to be allowed to interplead was, by the trial court, denied, and the express company appealed. The two points raised on appeal were: (1) the right of Jones, based on the pleadings, to maintain a class suit, and (2) whether or not the express agency was within its rights in filing a counter-claim setting forth a cause of action in the nature of interpleader. The Circuit Court of Appeals held that whether or not any of the individual claimants had claims within the statutory amount, the

express company was entitled to file its equitable defense in interpleader and the Court stated at page 344:

> "The Railway Express Co.'s right to file its interpleader is not established nor defeated by the merits of plaintiff's claim . . .
>
> "Where the possessor of funds can establish the essential and jurisdictional facts prescribed in the statute, his right to relief under this section (41)(26) is absolute."

and at page 345:

> "By proceeding under the counter-claim of the railway express the jurisdiction of the court was unassailable and the claims of all claimants may be litigated exactly the same as in a proper class suit.
>
> "It therefore follows that as a matter of wise discretion, as well as of recognizing a right which the railway express possessed absolutely. The court should after the counter-claim was filed, have proceeded as provided for in the interpleader statute." (Emphasis added.)

The foregoing case is very well reasoned and appears to set at rest the question of jurisdiction in those cases anticipated by subdivision (c) of the interpleader statute, *supra,* of the rights to introduce an equitable defense in interpleader or by bill in the nature of interpleader. It likewise conclusively established the jurisdiction in the District Court to take and maintain jurisdiction of all other parties to the action regardless of whether or not the Court would otherwise have had jurisdiction of them. This case is likewise authority for the bringing of a class action as was filed by the plaintiffs and appellees Mallonee, *et al.*

See also:

Treinies v. Sunshine Mining Co., 308 U. S. 66 at 70, in which this Court held that in such case, service may be had upon any claimant to the interplead property anywhere in the United States and (pp. 71-72) that only one defendant need reside in the district of suit;

Metropolitan Life Insurance Co. v. Skov, 45 Fed. Supp. 140;

Texas v. Florida, 306 U. S. 398, discussed at length in annotations 121 A. L. R. 1200 *et seq.* and in 83 L. Ed. 794;

Harris v. Travelers Insurance, 40 Fed. Supp. 154, 157.

If counter-claims set up causes of action within the jurisdiction of the Court as a court of equity they should not be dismissed, and on dismissal of the original action should be treated as original bills.

In no other district or court may complete relief be afforded. The District Court below has jurisdiction and the appellants have not disproved it.

This appellee's cross-claim in interpleader stands upon its own and should be treated as an original bill if the original action should be dismissed.

Vidal v. South American Securities Company, 276 Fed. 855 at 874.

In an action in interpleader under 28 U. S. C. A., Section 41(26), a motion to dismiss was made by a defendant. It was denied and the Court stated (p. 488):

> "It is well established that the jurisdiction of equity to grant the remedy of interpleader is not dependent upon statute."

Cases cited in support:

American Bonding Co. v. Albert & Davidson Pipe Corp. (D. C. N. J., 1943), 52 Fed. Supp. 486, 488;

Rossetti v. Hill (C. C. A. 9, 1947), 162 F. 2d 892.

In *Maryland Casualty Co. v. Glassell-Taylor,* 156 F. 2d 519 (1946), action by bill in the nature of interpleader and complaint for declaratory relief. Plaintiff had issued surety bond for $595,000.00 guaranteeing completion of a housing project.

Objection was made by defendants to the jurisdiction of the federal court and the District Court dismissed because of adequacy of remedies in the prior pending federal and state court actions.

In reversing the District Court, the Court said at page 523:

> "We think the lower Court was in error in dismissing the complaint. It stated a cause of action under: (a) the Interpleader statute; (b) the Rules of Civil Procedure; and (c) the Declaratory Judgment Statute. The Court had jurisdiction of the parties and of the subject matter in all three of these aspects. . . ."
>
> "The Federal Interpleader Statute and rule 22, Federal Rules of Civil Procedure, were not designed merely to prevent a multiplicity of suits and to protect the shareholder from multiple liability, but they were also intended to require all interested parties to come in and set up their claims in one case . . . The Interpleader Statute was also designed to afford a means of process by which claimants to a fund, who *live in other states,* may be called in and re-

quired to litigate in one court to the end that all claimants to the fund, as well as the holder of the fund, may be given protection.

"We consider it important that the usefulness of the statutory remedy of interpleader, which has been greatly enlarged by the Interpleader Act of 1936 and by Rule 22 of the Federal Rules of Civil Procedure, should not be impaired by narrow and restrictive rulings. In such cases where jurisdiction clearly appears, Federal District Courts do not have the right to decline to exercise that jurisdiction. . . ." (Emphasis added.)

To same effect see *Cramer v. Phoenix, etc.,* 91 F. 2d 141, C. C. A. 8 (1937).

Wherein affirming interpleader jurisdiction the Circuit Court said:

"It is elementary that where one court takes jurisdiction of a specific thing, the *res* is as much withdrawn from the judicial power of another as if it had been removed to a different territorial sovereignty. The tribunal whose jurisdiction first attaches holds it to the exclusion of the other until its duty is fully performed and the jurisdiction involved is exhausted. . . ."

Page 145:

". . . In these circumstances that court had exclusive jurisdiction and power to hear and determine all questions respecting title, possession, and control of them."

In *Security Bank v. Walsh,* 91 F. 2d 481, C. C. A. 9 (1947), plaintiffs in interpleader, a British corporation, sued conflicting claimants, all citizens of California.

Objection was made to the jurisdiction. The Ninth Circuit held jurisdiction existed notwithstanding lack of diversity.

As was stated by the Court in *Metropolitan Life v. Segaritis,* 20 Fed. Supp. 739 (1937), at page 741:

> ". . . the jurisdiction of this court to entertain an interpleader bill does not depend upon the validity or even bona fides of the claims of the respective defendants. It is obvious that in almost every case the claim of one of the parties will ultimately be determined to be invalid. That, however, is a matter for determination at the trial and cannot affect the jurisdiction of the court. As we have shown, the purpose of an interpleader bill is as much to protect a stakeholder from the expense of double litigation, however groundless, as it is to protect him from the risk of double liability. That in the opinion of the court he will ultimately escape the latter is no ground for refusing interpleader. . . ."

A case affirming the nationwide scope of process and injunction in interpleader arose from an appeal of a decision of this Court, decided by the United States Supreme Court in 1940. The case was:

> *Treinies v. Sunshine Mining Co.,* 308 U. S. 66, 84 L. Ed. 85 (1940)—(Affirmed).

Litigation had proceeded in two state courts, one in the State of Washington and the other in the State of Idaho. The state courts arrived at conflicting conclusions as to ownership of several thousand shares of stock in the plaintiff Sunshine Mining Company.

The mining company, faced with conflicting judgments and litigation affecting the same stock, filed a new action

in interpleader in the U. S. District Court in Idaho and obtained an injunction against further litigation in both state courts. The U. S. Supreme Court, of its own motion raised the question of jurisdiction of the U. S. Court in interpleader and decided in favor of such jurisdiction.

The Supreme Court said:

> "By the Act of January 20, 1936 (Old Title 28, Sec. 41, Sub. 26), the district courts have jurisdiction of suits in equity, interpleading two or more adverse claimants, instituted by complainants who have property of the requisite value claimed by citizens of different states. The suit may be maintained 'although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another."
>
> . . . . . .
>
> "The Interpleader Act authorizes the enjoining of parties to the interpleader from further prosecuting any suit in any state or United States on account of the property involved. *Such authority is essential to the protection of the interpleader jurisdiction and is a valid exercise of the judicial power.* (Emphasis added.)

The parties to the appeal attempted to relitigate the jurisdiction of the state courts which had made final judgments determining such question of jurisdiction. In refusing to permit relitigation of jurisdiction when the

judgments of the state court had become final, the Supreme Court said:

> "One trial of an issue is enough. The principles of *res judicata* apply to questions of jurisdiction as well as to other issues, as well to jurisdiction of the subject matter as of the parties." (Citing authorities.) (Emphasis added.)

In *Hunter v. Federal Life Ins. Co.,* 111 F. 2d 551, C. C. A. 8 (1940), the Court stated at page 555:

> "The appellant's first contention is that the court below was without jurisdiction, because diversity of citizenship did not exist, the claimants all being citizens of Arkansas, and the plaintiff being a nominal party." . . .
>
> "The jurisdiction of a federal court to entertain a bill of interpleader is not dependent upon the merits of the claims of the defendants. Metropolitan Life Ins. Co. v. Segartis, D. C. 20 F. Supp. 739. It is our opinion that a stakeholder, acting in good faith, may maintain a suit in interpleader for the purpose of ridding himself of the vexation and expense of resisting adverse claims, even though he believes that only one of them is meritorious."
>
> *Mallers v. Equitable Life,* 87 F. 2d 233 (C. C. A. 7, 1936).

Removal of appellant Ammann as conservator could have no effect on the jurisdiction of the Court below (interpleader or otherwise) because as above stated disposition of any of the issues by the Court before judgment make no change in Federal jurisdiction.

(d) Service of Summons in Interpleader Actions May Be Had Outside the District in Which Brought if the Court Has Original Jurisdiction.

Under former 28 U. S. C. 21 (26) and Rule 22 Federal Rules of Civil Procedure and now embodied in 28 U. S. C. 1397 "any civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside." 28 U. S. C. 1397. The fact that different claimants reside in different states does not defeat this jurisdiction. *Globe Indemnity Co. v. Puget Sound Co.* (D. C. N. Y. 1942), 47 Fed. Supp. 43.

(e) Jurisdiction Is Conferred by Doing Business.

Appellants Board, Federal Savings and Loan Insurance Corporation, Ammann and Bramley, all claim immunity from suit and that the Board is an indispensable party, therefore even though service of summons is made upon other appellants within the district, because the appellant Board did not physically and personally come to California to make its seizure but instead sends its deputies, appellant Ammann, its *alter ego* Federal Savings and Loan Insurance Corporation, and its dominated San Francisco Bank to perform its functions, they contend all are immune from judicial process in the very district in which they seized and confiscated the real estate and personal property.

The corporate and administrative structure of these inter-related and interlocking agencies and boards is determinative of the Congressional intent that all should respond to the courts of the district in which they do business and carry out their statutory functions.

It is obvious that Board, through its multiple agents in their various capacities, has at all times been and now

is doing business throughout the 48 states, and particularly as concerns this litigation in the State of California and in the Southern District United States District Court.

In *Seven Oaks v. Federal Housing Administration,* 171 F. 2d 947 (C. C. A. 4, 1948), the Court stated:

> ". . . The complaint alleges three causes of action, the first two of which ask damages on account of alleged negligence and wrongful conduct and the third seeks to have a trust in favor of plaintiff declared with respect to certain real estate in the district owned by the Housing Administrator. . . .
>
> "(1) We think that the venue was proper and that there was error in dismissing the suit. The Eastern District of Virginia was the district in which the cause of action arose, the Housing Administration was carrying on business in that district and one of the purposes of the suit was to have a trust declared on real estate there situate. We think that the statute permitting suit against the Housing Administration authorized suit within the district; that irrespective of this, the suit was properly brought within the district because of the venue statute relating to corporations; and that, in any view of the case, it was properly brought as to the third cause of action alleged which was a local action relating to real estate within that district.
>
> "(3, 4) The contention that it was the intention of Congress that the venue of suits against the Housing Administration be limited to the District of Columbia, the official residence of the Administrator, or that the Administration should have the discretion to say when it might be used elsewhere by waiving venue, will not bear analysis. Congress

> certainly knew, when providing for suit in state courts, that there were no such courts in the District of Columbia; and when it provided that a great business agency authorized to engage in business throughout the country might sue and be sued like an ordinary business corporation, it could hardly have intended that persons in California, Hawaii or Alaska, desiring to exercise the right to sue must travel to the District of Columbia to do so. *Cf.* Ferguson v. Union National Bank of Clarksburg, 4 Cir. 126 F. 2d 753, 757.
>
> "It must be conceded by everyone that it is highly desirable that a federal agency such as the Housing Administration be suable in the district where it is doing business on causes of action arising out of the business done there." . . .

Particular attention is called to the language: "It could hardly have intended that persons in California . . . desiring to exercise the right to sue must travel to the District of Columbia to do so." This should be decisive of any question of the appellants being indispensable parties.

Among the issues in this litigation is the ownership and voting rights of stock in whichever of the Federal Home Loan Banks of Portland, San Francisco or Los Angeles are found by the Court to be in existence. The Preliminary Injunction, the subject of the present appeal, was granted by the Court below to preserve the *status quo* pending its decision of that (and other issues) to be decided on the trial on the merits.

The jurisdiction of a District Court to enjoin non-resident defendants under identical circumstances was considered in the case of *Harvey v. Harvey,* 290 Fed. 653 (C. C. A. 7, 1923).

The Court of Appeals affirmed the preliminary injunction and said at page 659:

"Appellant's contention that the injunction granted relief *in personam* and therefore cannot be based upon service under section 57 (Sec. 118, Title 28), which applies to actions *in rem* is not well founded. This suit is in the nature of a suit to quiet title to personal property within jurisdiction of the court. The court has in its custody the *res*. It puts out its protecting hand and says to the defendants that the plaintiff claims the rest; that pending the determination of that claim the *status quo* shall be maintained and the defendants restrained from using the *res*; that if they desire to contest the claim of the plaintiff to this property they shall come into court and do so. . . ."

. . . . . .

". . . Consequently the court . . . *may, in short, make any order that is necessary to secure to plaintiff the full enjoyment of his property within the court's jurisdiction, by injunction or otherwise,* if within the prayer of the bill."

. . . . . .

"These cases are appeals from the order granting a temporary injunction and the order refusing to vacate or dissolve the same. The merits of the controversy between the parties are not before the court, except in so far as necessary to determine whether the plaintiff by his bill and affidavits has made out a case sufficient to sustain the temporary injunction . . ." (Emphasis added.)

II.

The Appellants Herein Are Proper But Not Indispensable Parties to the Action in General and the Cross-Complainants in Interpleader in Particular.

The appellant members of the Board are not indispensable parties to this action. They may be proper parties for the trial of the case but they are not indispensable to the complete determination of this action. The appellants cite (App. Br. pp. 43 and 101) the case of *Williams v. Fanning,* 332 U. S. 490 (1947), for the proposition that this Court has no jurisdiction over the persons of indispensable parties. The *Williams* case gives a formula for use in determining the indispensability of a superior governing officer, to-wit: "The superior officer is an indispensable party if the decree granting the relief sought will require him to take action either by exercising directly a power lodged in him or by having a subordinant exercise it for him." But the *Williams* case held that the Postmaster General was not an indispensable party in an action brought to enjoin the local postmaster from carrying out a postal fraud order issued by the Postmaster General, after a hearing. The Supreme Court stated that the Postmaster General was not indispensable because the decree entered would effectively grant the relief desired by expending itself on the subordinate official who was before the Court.

> "The decree in order to be effective need not require the Postmaster General to do a single thing—he need not be required to take new action either directly as in the Smith and Fall cases or indirectly through his subordinate as in the Rutter case. No concurrence on his part is necessary to make lawful the payment of the money orders and the release of the mail unstamped. Yet that in all the court is asked to command." (P. 494.)

Similarly, in the present case, the decree will effectively grant the relief desired by the complaint by expending itself on the subordinate officials and entities who are before the Court. The decree in order to be effective need not require the Board to do a single thing, either directly or indirectly. No concurrence on their part is necessary to restore the assets and property of Wallis or other interpleaders, the Association or of the Los Angeles Bank to it or to clear the title of the plaintiffs, cross-claimants and the bank to their respective properties and assets. The Court does not have to direct the Board to dissolve the San Francisco bank and to reestablish the Los Angeles Bank or to determine the ownership of the property interplead.

For further cases demonstrating that the Board is not an indispensable party to this action, see the following cases:

Hynes v. Grimes Packing Co., 337 U. S. 86, 96 (1949) (Secretary of the Interior not an indispensable party to a suit to enjoin the exclusion of commercial fishermen from shoreline waters designated as an Indian reversation by the Secretary, on the ground of the invalidity of the Secretary's order and regulation);

Jeager v. Simrany, 180 F. 2d 650, 651 (C. C. A. 9, 1950) (Commissioner of Immigration not an indispensable party to a suit for declaratory judgment and injunction against the local immigration officer, to prevent him from proceeding to cancel a record of registry and a certificate of lawful entry to an alien);

Rank v. Krug, 90 Fed. Supp. 773, 802 (D. C. S. D. Cal., 1950) (Secretary of the Interior and the United

States not indispensable parties to a class suit to enjoin interference with plaintiff's water rights by reason of erection of a dam under Federal Reclamation Law);

Reeber v. Rossell, 91 Fed. Supp. 108, 111 (D. C. S. D. N. Y., 1950) (Administrator of Veterans' Affairs and Chairman of Civil Service Commission not indispensable parties in action for declaratory judgment that administrator's order was null and void as against the plaintiffs);

National Radio School v. Marlin, 83 Fed. Supp. 169, 170 (D. C. N. D. Ohio, 1949) (Administrator of Veterans' Affairs not indispensable party to suit to enjoin local veterans finance officer and others from withholding issuance of vouchers for veterans' tuition).

Other cases to the same effect are *Colorado v. Toll,* 268 U. S. 228; *Jarvis v. Shachelton Inhaler Co.,* 136 F. 2d 116; *Esquire Inc. v. Walker,* 155 Fed. Supp. 1015; *American School v. McAnnulty,* 187 U. S. 94; *Homer Glen Wilcox v. DeWitt,* 144 F. 2d 353; *Chester C. Fosgate Company v. Kirkland,* 19 Fed. Supp. 152.

The attempt to merge, liquidate and seize the Los Angeles Bank and the Association, both situated in Los Angeles County, California, and at the same time to claim immunity from the United States Courts under a theory that appellants are privileged to create havoc in California but can only be reached by suit if at all by the victim 3000 miles away in Washington, D. C., to test the validity of such actions comes with very poor grace from Government officials appointed to protect the savings and homes of the people.

The unfairness of such a situation as sought by appellants is discussed by the Supreme Court in the case of *First National Bank of Canton v. Williams,* 252 U. S. 504.

There can be no indispensable or unservable parties to an action *in rem* involving possession and title to real and personal property situated within the territory of the District Court.

The Court, having jurisdiction of the *res,* summons the parties to come and defend their rights to the *res.* Regardless of whether they appear or default, the Court proceeds to decide ownership and possession of the title. If an owner or possessor of the property is immune from suit, he must respond to the Court and present his claim for immunity, for immunity can be waived. If the claim of immunity is made, the Court must then exercise its jursidiction to decide whether or not the claimed immunity does actually exist. Such determination is an exercise of jurisdiction by the Courts to determine its jurisdiction. Often such jurisdiction can only be determined by a trial on the merits.

Land v. Dollar was such a case. 300 U. S. 731, 91 L. Ed. 1209 (1947). The Supreme Court said:

> ". . . We only hold that the District Court has jurisdiction to determine its jurisdiction by proceeding to a decision on the merits."

To the same effect see:

Jellenik v. Huron Copper Mining Co., 177 U. S. 1, 44 L. Ed. 647 (1900).

In *Hynes v. Grimes Packing Co.,* 337 U. S. 86, 93 L. Ed. 1231 (1949), the case arose on the application of a regulation to the Secretary of the Interior as to

Salmon Fishing in waters in Alaska. The plaintiffs, the fisheries, claimed that the action and regulation was invalid and obtained an injunction against the Regional Director of Alaska of the Fish and Wild Life Service seeking an injunction to prevent the enforcement of the invalid regulation. The District Court granted the injunction, the opinion being in 76 Fed. Supp. 43. This Court affirmed the granting of the injunction the opinion being in 165 F. 2d 323. U. S. Supreme Court affirmed both these judgments various questions being involved. One of the principal defenses made was that the secretary of the interior was an indispensable party and that the action could not proceed nor the injunction be granted in his absence. The contention was overruled in all three opinions and was affirmed by the U. S. Supreme Court which held under the doctrine of *Williams v. Fanning* that if the injunction would be effective without any action by the absent government official he was not an indispensable party.

In *Int. Shoe Co. v. Washington,* 326 U. S. 310, 90 L. Ed. 95 (1945). At page 104 the Court stated:

> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

III.

The Effect of the Decisions of the Supreme Court in This Litigation Was to Return the Case to the District Court for Trial and Other Proceedings.

Appellants have made jurisdiction of the subject matter and jurisdiction of the parties the subject of appeals, writs, motions to dismiss, and motions to quash. Notwithstanding these attacks, jurisdiction of the Court below has been sustained and upheld in the six appeals and writs thus far decided out of the ten such appeals and writs taken by appellants. Jurisdiction of the Court below has never been denied by any Appellate Court in these proceedings.

On appeal to the U. S. Supreme Court, appellants urged dismissal of the action. It was not granted. The U. S. Supreme Court in *Fahey v. Mallonee,* 332 U. S. 245, said at pages 256-7:

> ". . . nor do we mean to be understood that if supervising authorities maliciously, wantonly and without cause destroy the credit of a financial institution, there are not remedies."

and at page 257:

> "It is obvious that there is more to this litigation than meets the eye on the pleadings. The plaintiffs' charges that ill will and malice actuated the supervising authorities, as well as the charges of the defendants that the institution has been mismanaged and that the management is unfit, are alike undetermined

by the courts below, and we make no determination or intimation concerning the merits of these issues or as to other remedies or relief than that in the judgment before us."

The Mandate from the Supreme Court [R. 2304] reads:

"And it is further ordered that this case be, and the same is hereby, remanded to said District Court for proceedings in conformity with the opinion of this Court."

This mandate was dated June 23, 1947. The record shows 9,194 pages of proceedings since the mandate was filed in the District Court—during all of which proceedings appellants have appeared, either generally or specially.

Appellants' efforts to secure dismissal in the Supreme Court, also in their application for a writ of prohibition, failed. In *Ex parte Fahey,* 332 U. S. 258, 260, the Supreme Court said:

"Mandamus, prohibition and injunction against judges are drastic and extraordinary remedies. We do not doubt power in a proper case to issue such writs. But they have the unfortunate consequence of making the judge a litigant, obliged to obtain personal counsel or to leave his defense to one of the litigants before him."

IV.

The Apparent Aim of Appellants Is to Start a New "Run" of Depositors to Withdraw Their Accounts From the Association and Thus to Wreck It.

The Association was organized in 1934 and operated under the same management at all times except for the period it was under the control of the "Conservator."

Prior to its seizure it had increased its assets from approximately $7,500.00 to approximately $26,000,000.00 at the time of seizure [R. 87, 45-46, 4168] and this is not denied. It had uniformly and consistently paid dividends and built up surplus, reserves, and undivided profits of $1,300,000.00 [R. 7]. This is not denied.

Following the appearance of the appellant Ammann as the purported "Conservator," withdrawals ran as high as $2,000,000.00 per day and at the end of five days reached a total of between 6 and 7 millions of dollars [R. 30, 107]. At the time he took over, Ammann stated [R. 117] "If it gets in the papers we are here, it will tear down the institution because we are here." Ammann also stated [R. 118] "If it gets in the paper we are here, it will create a run and tear down the institution; that's why we are here."

The run by the depositors continued until approximately $10,000,000.00 had been withdrawn under the tender management of the Conservator. When the 3 Judge Statutory Court ordered the restoration of the Association to its management, the deposit immediately increased and when the Conservator was again restored, they drop-

ped at least $1,000,000.00 almost immediately. Since the management has been operating the Association, following the order of the Court on January 23, 1948 [R. 8310-8327] pursuant to the Board Order No. 388 dated January 17, 1948 [R. 8310], the Association has again approached a normal and healthy growth which no doubt would have been continuous had it not been for the interference of the appellants and their "Conservator." As a result of the retarding of its growth by the appellants, the assets of the Association would no doubt today be many millions of dollars greater than they now are. It is a well known fact that any publicity even suggesting a lack of financial stability will immediately impair the status of such an institution. By the Board's Order No. 2015, the subject of the injunction with which this appeal is concerned, it is obvious that the appellants desire to parade before themselves various insinuations of bad management on the part of the officers and directors of the Association and thus start another run, which, in view of their past actions, might well this time actually wreck the Association. Fortunately, it is solvent and prosperous in spite of the mismanagement of appellant Ammann. It would be a calamity were the appellants permitted to conduct such a mock hearing with themselves as the complainants, witnesses, prosecutors, judges and Court of final appeal. Were it not for the insistence of the appellant Board and its members of their right to conduct such a mock proceeding, we, who have grown up in the American tradition of fair play, would say: "It can't happen here."

CONCLUSION.

Appellants have singularly failed to present any argument as to conflicting or any contrary evidence or lack of evidence to support any of the Court's findings. Appellants have failed to analyze the evidence presented at approximately one hundred hearings as set forth in the Transcript of Record herein of 11,498 pages. The appellant's law points being untenable, the appeal is without merit and the order appealed from should be affirmed.

Respectfully submitted,

RAYMOND TREMAINE,
Attorney for Appellee Robert H. Wallis.